

Open Minutes

Missouri State Board of Optometry

**October 12, 2002
The Country Club Hotel
Lake Road HH and Carol Road
Lake Ozark, Missouri**

The open meeting of the Missouri State Board of Optometry was called to order by Dr. Karen B. Rosen, President, at approximately 9:00 a.m. on Saturday, October 12, 2002, at the Country Club Hotel, Lake Road HH and Carol Road, in Lake Ozark, Missouri.

BOARD MEMBERS PRESENT:

Dr. Karen B. Rosen, President
Dr. Cathy L. Frier, Vice President
Dr. W. Carter Glass, Secretary
Dr. Terry M. Swinger, Member
Dr. Max T. Aldrich, Member
Ms. Vickie E. Young, Public Member

STAFF MEMBERS PRESENT:

Sharlene Rimiller, Executive Director

LEGAL COUNSEL PRESENT:

Ms. Elena Vega, Assistant Attorney General
Mr. Edward 'Chip' Walsh, Private Legal Counsel

To better track the order in which items were taken up on the agenda, each item in the minutes will be listed in the order it was discussed in the meeting.

APPROVAL OF THE AGENDA

A motion was made by Dr. Swinger and seconded by Dr. Frier that the agenda be approved as printed. Motion carried unanimously.

APPROVAL OF MINUTES

A motion was made by Dr. Glass and seconded by Dr. Swinger that the minutes of the July 13, 2002 and August 10, 2002 meetings be approved as written. Motion carried unanimously.

EXECUTIVE DIRECTOR REPORT

Financial Statement

Mrs. Rimiller presented the Board with the following financial statement for FY-02 year-end.

<u>Beginning Fund Balance</u>				\$202,727.76
Revenue (7/1/00 to 6/30/01)				<u>\$136,673.85</u>
Fund Balance Sub Total				\$339,401.61
Appropriations to Board:				
Personal Service	\$46,446.00			
Expense & Equipment	<u>\$42,604.00</u>			
Total Appropriations	\$89,050.00			
Appropriation Expenditures:				
Personal Service	\$31,822.30			
Expense & Equipment	<u>\$37,296.82</u>			
Total Appropriation Expenditures	\$69,119.12	\$69,119.12		
Fund Transfers: (Actual for Year)				
Rent & Utilities	\$2,279.08			
General Revenue	\$18,190.31			
Optical Imaging	\$935.41			
Fringe Benefits for FTE	\$9,282.29			
DED/MIS	\$1,862.69			
Refunds	\$595.00			
Professional Registration	\$11,805.00			
O.A. Cost Allocation	\$1,322.01			
FY-2001 Transfers paid in FY-2002	<u>\$6,713.47</u>			
Total Transfers	\$52,985.26	<u>\$52,985.26</u>		
<u>Total Fund Expenditures</u>		\$122,104.38		\$122,104.38
<u>Ending Fund Balance</u>				\$217,297.23

Mrs. Rimiller highlighted the notes to the financial statement. The fund balance increased by only \$14,569.47 in FY-02, which is significantly less than the increase seen

in FY-01 (\$45,718.70). The reason is due to the fact that the Board's expense and equipment expenditures increased by \$12,680.96 and Attorney General costs increased by \$13,022.45, mainly attributable to increased litigation costs. Mrs. Rimiller said that she monitors the Board's fund balance closely to avoid any possible biennium sweep of funds to General Revenue. Because renewal of licenses is now every two years, funds cannot lapse to General Revenue until the balance in the Board's fund exceeds three times the appropriations for the preceding fiscal year. Mrs. Rimiller also provided the Board with the Division's five year fund balance projections and indicated that based on these projections, there does not appear to be any indication that money from the Board's fund could lapse to General Revenue.

Rulemaking Status Report

Mrs. Rimiller reported that the proposed amendments to the Board's rules on Licensure by Examination, Licensure by Reciprocity and Fees should be in effect by the end of November. Mrs. Rimiller reminded the Board that the purpose of the amendments is to eliminate the fingerprinting requirement and to change the name of the NBEO's clinical examination from VRICS to Patient Assessment and Management (PAM). The Board discussed the fingerprinting requirement. Applications received after the effective date of the rule will no longer have to be accompanied by the fingerprinting cards.

Continuing Education Course Approval

The Board reviewed the list of continuing education courses that were approved between the date of the last meeting and the date of this meeting. A motion was made by Dr. Frier and seconded by Dr. Glass that the Board ratify approval of the continuing education courses from the list provided. Motion carried unanimously. Dr. Rosen encouraged the person responsible for approving CE to make sure the application contains the agenda with an hour-by-hour breakdown of the course to ensure that the provider is teaching the number of continuing education hours requested.

CLEAR

Dr. Swinger related an interesting story regarding his flight to Las Vegas to attend the CLEAR 2002 Conference on September 12th – 14th. In his report, Dr. Swinger mentioned that he attended a seminar on sexual misconduct that he thought was very well provided. Mrs. Rimiller also provided a brief report on her attendance at the CLEAR conference. Both Dr. Swinger and Mrs. Rimiller expressed appreciation for being given the opportunity to attend the CLEAR conference on the Board's behalf. Dr. Frier questioned if anything at CLEAR provided information regarding HIPAA compliance specific to whether medical providers should leave the door to their patient examining room open or closed while the patient is with the doctor. The CLEAR sessions did not have any information on HIPAA compliance issues.

OWNERSHIP OF PATIENT RECORDS - RETENTION OF PATIENT RECORDS

Dr. Aldrich mentioned that due to a situation that has occurred in his hometown, he thought it important for the Board to address the question of ownership of patient records. Dr. Aldrich also questioned if a third party, such as the owner of an optical company, can sell the patient records without patient notification. Another question

raised by Dr. Aldrich is the legal process for disposing of patient records. The attorneys referenced the law on patient access to records but indicated they are not aware of any state or federal laws on these questions. It was the consensus of the Board that each member contact their medical malpractice insurance carrier to ask for their recommendations on record retention and then provide that information to Mrs. Rimiller so she can circulate it to the attorneys for further research. The attorneys will research other state and federal laws regarding retention of Medicare and Medicaid patient records and Mrs. Rimiller will check with the other boards within the Division on their record retention requirements. Mr. Walsh suggested that the doctor might want to have a release for new patients to sign disclosing how long patient records are maintained. With regard to the question on who owns patient records, the attorneys were asked to include this in their research but it was generally thought that the records should be the property of the optometrist. However, it was noted that this is likely not the case when an optical company employs an optometrist and in those situations, the question needs to be addressed between the employee/employer in the contract.

TMOD EXAMINATION

Mrs. Rimiller asked for additional time to prepare the amendments necessary to the Board's rules as a result of the NBEO's elimination of the TMOD examination. This item was tabled until the draft proposed amendments are brought to the Board at its next meeting.

NEXT MEETING

Dr. Rosen extended an invitation for the Board to come to St. Louis for either the winter or summer meeting next year. The Board scheduled its next meeting in conjunction with the Heart of America meeting in Kansas City next February. The Board's meeting will be on Thursday, February 13th. The Board will schedule its summer meeting in St. Louis at the February meeting.

CONTACT LENSES

Dr. Rosen informed the Board that she would like to see the Board write another letter to the Attorney General to seek assistance regarding the illegal selling of contact lenses by some Missouri businesses. Dr. Rosen mentioned that years ago the Board had written a letter to Attorney General Jay Nixon regarding the Board's concerns at that time relative to the dispensing of contact lenses without a prescription by mail order contact lens companies. Dr. Rosen thought it time to bring up the issue again because of the plano contact lenses that are being dispensed without a prescription and the health risks this practice presents to the public. Dr. Swinger mentioned that a convenience store is selling the plano contact lenses in his area. Mrs. Rimiller was asked to look back in the file and find the previous letter that was sent to the Attorney General and draft a new letter emphasizing the health concerns to the public, especially those for young people that are purchasing the lenses and switching them back and forth among each other. It was noted that there was a recent 20/20 segment regarding this issue and that a copy of the tape can be requested from the American Optometric Association.

LICENSURE APPLICATIONS

Dr. Glass brought up the Board's current policy on approval of licensure applications. The policy is to forward completed, or almost completed, licensure applications to the secretary of the Board for final approval. Dr. Glass questioned the necessity to do this since staff is qualified to make the determination of whether or not all the supporting documentation has been received and an applicant is eligible for licensure. Mrs. Rimiller provided the Board with a historical overview of the application approval process. A motion was made by Dr. Glass and seconded by Dr. Swinger that the Board delegate application approval to staff on all routine applications and any questionable applications can still be brought to the full Board for review and approval. Motion carried unanimously.

BACKGROUND CHECKS

Dr. Aldrich questioned if there is any other way to conduct criminal history background checks without the fingerprinting cards. Mrs. Rimiller mentioned that there is probably a way that a background check can be made with just a social security number but she thought that social security numbers would only produce criminal history information from Missouri. She also thought that the social security number would not produce exact identification. In order to find out if an applicant is actually lying on his/her application regarding arrests and/or criminal convictions is through fingerprinting. Mrs. Rimiller was asked to send out a survey through the ARBO e-mail list to find out how many other states are requiring fingerprinting to do criminal history background checks on their new applicants for licensure and if they are not requiring fingerprinting, ask how they determine if the applicant is of good moral character.

CLOSED SESSION

Motion was made by Dr. Frier and seconded by Dr. Glass to move into closed session pursuant to section 610.021 (1) and (14) RSMo, for the purpose of discussing complaints, investigative reports, applicants for licensure, general legal actions, causes of action or litigation and any confidential or privileged communications between the Board and its attorney. Those voting yes: Dr. Frier, Dr. Glass, Dr. Aldrich, Dr. Swinger and Ms. Young. Motion carried unanimously.

LAW COMMITTEE REPORT

Dr. H.L. Poynter met with the Board to discuss what he and Ms. Vega have done thus far regarding the optometry law re-write. The re-write is primarily neutral. There have been no substantive changes. If the language is changed, it merely reflects what optometry does today. There is also some administrative changes needed, which have not been addressed, regarding the disciplinary process. When this process is finished, Dr. Poynter will present a draft to the Board to decide the next step. Dr. Poynter mentioned that he and Ms. Vega are about 65-70% complete with the re-write of the statutes. Perhaps over the next month or two a draft will be ready to present to the Board. Nothing has been done yet with regard to changes that will be needed to the regulations. Dr. Poynter suggested that when he and Ms. Vega are ready to present their draft, there be an open meeting of the Law Committee. He would like to keep that first meeting and perhaps the second meeting, if needed, limited in the number of

participants so it can be a working meeting. After the Law Committee has had the opportunity to review the draft and make recommendations for changes, then a third meeting can be scheduled for anyone who cares to comment. When everyone has had an opportunity to comment, he will come back to the Board with a final draft.

Dr. Poynter also asked for guidance regarding Sunshine Law compliance as he moves through these various steps, especially with regard to any comments he receives from licensees and others regarding the optometry law re-write. He questioned if the communications between him and Ms. Vega are protected under attorney/client communications since he is no longer a member of the Board. Another area where Dr. Poynter asked for guidance is how to go about promulgating the needed changes in the regulations. He also asked the Board if it wants to add the delegation and the licensure by endorsement issues to the draft optometry re-write? Dr. Poynter noted that these changes would be substantive. Dr. Rosen said that if substantive changes are going to be proposed in the statute re-write, then increasing the continuing education requirements from eight to twelve hours per year should be considered as well. The Board complimented Dr. Poynter and Ms. Vega for doing a great job of putting this all together. The Board agreed that Dr. Poynter should pursue the substantive changes he discussed along with all the other changes in his initial draft, as well as look at changes that will be needed in the regulations. Mr. Walsh was asked to do some research into the question regarding whether or not Dr. Poynter has the same attorney/client privilege as a member of the Board and what, if any, records Dr. Poynter should retain under the Sunshine Law regarding his work as an appointed representative of the Board on the optometry law re-write.

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ADJOURNMENT

There being no further business to be brought before the Board at this time, a motion was made by Dr. Swinger and seconded by Dr. Glass that this meeting adjourn. Motion carried unanimously. The meeting adjourned at approximately 2:05 p.m.

Respectfully submitted,

Sharlene Rimiller, Executive Director

Approved by the Board on: _____

